UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/601,614	06/23/2003	Todd Thomas	506422-0112	8806

27910 7590 01/21/2005

STINSON MORRISON HECKER LLP
ATTN: PATENT GROUP
1201 WALNUT STREET, SUITE 2800
KANSAS CITY, MO 64106-2150

EXAMINER
PECHHOLD, ALEXANDRA K

ART UNIT	PAPER NUMBER
3671	

DATE MAILED: 01/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/601,614	THOMAS ET AL.	
	Examiner	Art Unit	
	Alexandra K Pechhold	3671	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *26 November 2004*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☐ Claim(s) _____ is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *25-38 and 40-45* is/are rejected.

7)☒ Claim(s) *39* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Applicant has provided evidence in this file showing that the invention was owned by, or subject to an obligation of assignment to, the same entity as Grubba et al (US 6,623,207) at the time this invention was made. Accordingly, Grubba et al (US 6,623,207) is disqualified as prior art through 35 U.S.C. 102(e), (f) or (g) in any rejection under 35 U.S.C. 103(a) in this application. However, this applied art additionally qualifies as prior art under another subsection of 35 U.S.C. 102 and accordingly is not disqualified as prior art under 35 U.S.C. 103(a).

Applicant may overcome the applied art either by a showing under 37 CFR 1.132 that the invention disclosed therein was derived from the inventor of this application, and is therefore, not the invention "by another", or by antedating the applied art under 37 CFR 1.131.

3. Claims 25-32, 34-38, and 40-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Grubba et al (US 6,623,207) in view of Doi et al (US 4,162,998).

Regarding claim 25, Grubba discloses the method recited in claim 12 and also column 3, lines 40-41, 50-51 and column 4, lines 14-18. The testing of the mixture

using a moisture susceptibility test is disclosed in column 5, lines 57-59, column 6, lines 52-55, Table 2, and claim 23. Grubba fails to disclose testing the mixture using a raveling test. Doi teaches using a raveling test in "Example 2" and discussed in column 7, lines 15-41, to determine the wear of the pavement after being driven over by tires with chains attached thereto. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the method of Grubba to include testing the mixture using a raveling test as taught by Doi, since Doi discloses the effects of raveling in column 1, lines 16-41, which is unarguably an important characteristic of an asphalt surface, and applying the testing to Grubba's method provides one more measurable parameter to provide the most durable, effective asphaltic mixture composition.

Regarding claim 26, use of a stability test is disclosed by Grubba in Table 1 in column 6 and also Table 2.

Regarding claims 27, 28, 29, and 30, testing of the modulus and resilient modulus is disclosed by Grubba in column 5, lines 23-42, and column 6, line 55, and claim 19.

Regarding claim 31, testing using a thermal cracking test is disclosed by Grubba in claim 23.

Regarding claim 32, testing using a thermal cracking test is disclosed in Table 2 in column 7, and testing using a stability test is disclosed in Table 1 in column 6 and Table 2.

Regarding claim 34, Grubba discloses taking samples and using these samples to make reclaimed asphalt pavement particles in claim 12.

Regarding claim 35, Grubba discloses inspecting the samples as recited in column 5, lines 13-25.

Regarding claim 36, Grubba implies crushing in step (I) of claim 12.

Regarding claims 37 and 38, Grubba discloses taking samples from different areas in column 5, lines 51-62.

Regarding claim 40, Grubba recites this limitation in the "**" footnote under Table 2 (Col 7, lines 15-20).

Regarding claim 41, Grubba recites a retained strength of 70% in claim 24.

Regarding claim 42, Grubba discloses the removing, mixing and applying steps in claim 12 and column 3, lines 40-41, 50-51 and column 4, lines 14-18. The "cold-in-place" limitation is disclosed by Grubba in column 6, lines 49-52 and column 4, liens 31-35.

Regarding claim 43, the visual inspection step to determine if the road has a good base and good drainage is disclosed by Grubba in column 5, lines 10-18.

Regarding claim 44, the application of a wearing surface is disclosed by Grubba in column 8, lines 4-9.

Regarding claim 45, the product is inherently the result of the process as discussed in regards to claim 42 above.

4. **Claim 33 is rejected under 35 U.S.C. 103(a) as being unpatentable over Grubba et al (US 6,623,207) and Doi et al (US 4,162,998) as applied to claim 25**

above, and further in view of Stone (US 4,373,961). The combination of Grubba and Doi fails to disclose the emulsifier as cationic. Stone teaches a cationic emulsifier, the cation having the advantage of imparting anti-strip properties when blended with aggregate, and when the emulsion is mixed with old asphalt pavement, the result is a unique, synergistic pavement with surprisingly high bearing strength and resistance to adverse effects of water (Col 2, lines 42-51). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the method of Grubba having the raveling test of Doi to include an emulsifier that is cationic as taught by Stone, since Stone states in column 2, lines 42-51 that the cation imparts anti-strip properties when blended with aggregate, and when the emulsion is mixed with old asphalt pavement, the result is a unique, synergistic pavement with surprisingly high bearing strength and resistance to adverse effects of water.

Allowable Subject Matter

5. Claim 39 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

6. Applicant's arguments filed 11/26/04 address the fact that Grubba and the claimed invention both were subject to an obligation of assignment to KMC Enterprises, Inc. at the time the claimed invention was made. Accordingly, as noted under the

statutory basis of the claim rejections above, the Grubba reference is disqualified as prior art through 35 U.S.C. 102(e), (f) or (g) in any rejection under 35 U.S.C. 103(a) in this application. However, this applied art additionally qualifies as prior art under another subsection of 35 U.S.C. 102 and accordingly is not disqualified as prior art under 35 U.S.C. 103(a). The Grubba reference was filed on 6/7/01, whereas applicant's invention has priority only back to 6/14/01, so Grubba qualifies as prior art under 35 U.S.C. 102(a).

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alexandra Pechhold whose telephone number is (703) 305-0870. The examiner can normally be reached on Mon-Thurs. from 8:00am to 5:30pm and alternating Fridays from 8:00am to 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will, can be reached on (703)308-3870. The fax phone number for this Group is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1113.

Thomas B. Will
Supervisory Patent Examiner
Group 3600

AKP
1/18/05